

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FS:MAN:4:TL-N-8-00; 9-00
Dtonuzi

date:

to: Robert Skiba, Territory Manager, LM:FS
Attention: Andrew Yeancades

from: Area Counsel, Financial Services, Area 1: Manhattan

subject:

EIN:

EIN:

Tax Years: through

SSN:

SSN:

Tax years: through

Statute of Limitations expires:

Restricted Consent

Uniform Issue List # 6501.08-17

This memorandum responds to your request for assistance on May 22, 2001, as to whether the above taxpayers meet the requirements for entering into restricted consents. Our opinion is based upon the particular facts presented, as set forth below, and may not be cited as precedent. Under established procedures for opinions involving issues involving well-settled legal principles, we have referred this memorandum to the National Office of the Office of Chief Counsel for their 10-day post review. As such review may result in modifications to our opinion, we request that you delay acting on our advice until we inform you of the National Office review.

(“ ”) is the above consolidated group’s parent and (“ ”) is one the major operating subsidiaries. ’s primary activity is the promotion and sale of tax shelter investments, including the

is the predominant shareholder of

_____ and the chief operating officer and president of _____. The taxable years under examination for _____², _____ and _____ are set forth above. The issues under examination for _____ include: 1) the _____ 2) the mutual fund credit and related gains and losses; 3) unreasonable compensation; 4) travel and entertainment expenses; and 5) _____'s personal expenses. The issues under examination for _____³ include: 1) the mutual fund credit and related gains and losses; 2) constructive dividends from disallowed personal corporate expenses; and 3) other income from an unpaid promissory note to the corporation. You have indicated that you do not anticipate raising any other issues in these examinations.

Issue

Whether the above taxpayers are entitled to enter into restricted consents to extend the statutes of limitations on assessment when the examinations of the restricted issues are incomplete.

Conclusion

The above taxpayers are entitled to enter into restricted consents to extend the statutes of limitations on assessment notwithstanding that the examinations of the restricted issues are incomplete.

Analysis

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provides an exception to the general three year statute of limitations on assessment. This exception provides that the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations. The Service typically uses the Form 872 to memorialize such consent for corporations. In this case, the taxpayers have requested restricted consents for the years in issue.

Internal Revenue Manual § 8.2.1.3.3.12(2) sets forth the criteria for entering into a restricted consent. It provides that "[w]here there are issues other than the one or more subject to the restricted consent, such issues must be agreed and provision made for assessment of any deficiency..." Publication 1035 further provides that restricted consents will not be accepted

² _____ is part of this examination as the parent of the consolidated group. You have indicated that no issues have been raised with respect to _____.

³ _____ and _____ filed joint Federal income tax returns for the taxable years in issue.

unless the following conditions are met:

- 1) The number of unresolved issues that must be covered by the restricted consent do not make it impractical to do so.
- 2) The scope of the restrictions must be clearly and accurately described for all the unresolved issues.
- 3) The issues not covered by the restricted consent are agreed and provision is made for assessing any deficiency or, under certain situations, scheduling any overassessment (refund or credit) for the agreed issues.
- 4) The use of a restricted consent at the district level is approved by the appropriate Service representative.

You have indicated that the above taxpayers have proposed to include the above-described five corporate and three individual issues. At this time, there are no unresolved issues that would not be covered by the proposed restricted consents. Based on the few pending issues to be covered by the restricted consent, it does not seem impractical to enter into the restricted consents. Thus, it appears that the conditions for entering into restricted consents in these cases have been satisfied.

You have expressed concern that some of the restricted issues are not fully developed. However, the manual does not require that the restricted issues be fully developed. Indeed, the restricted consents will provide additional time to complete your examination of those undeveloped issues. Therefore, you cannot decline to enter into restricted consents on this basis.

The Internal Revenue Manual § 4541.72 states that extreme care should be taken in writing restrictive language in a consent. The restriction should not foreclose utilization of alternative rationales in making the adjustment if such action becomes necessary. The restrictive language should describe the area of consideration rather than the proposed tax treatment. Code sections should not be included in the restrictive language. Each restricted consent must contain a basic restrictive statement and a description of the area of consideration. The basic restrictive statement is as follows:

The amount of any deficiency assessment is to be limited to that resulting from any adjustment to (description of the area of consideration) including any consequential changes to other items based on such adjustment.

Procedural Considerations

Pursuant to I.R.C. § 6501(c)(4)(B), the Service is required, each time that it requests a taxpayer to extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayers when you solicit the

consents. Alternatively, you may advise the taxpayers in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case files.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual. Specifically, the Manual requires the use of Letter 907(DO) to solicit a Form 872, Letter 928(DO) as a follow-up letter to Letter 907(DO)(when appropriate), and Letter 929(DO) to transmit a copy of the executed consent to the taxpayer. See IRM Handbook No. 121.2.22.3 and No. 121.2.22.4.2. Dated copies of these letters should be retained in the case file. When the signed Forms 872 are received from the taxpayers, the responsible LMSB manager should promptly sign and date them in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 121.2.22.5.10. The manager must also update the respective statutes of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. See IRM, Handbook No. 121.2.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

This advice relates solely to the facts of this case and should not be used or applied to the facts of any other case. If you have any questions regarding this memorandum, contact Attorney Drita Tonuzi at (212) 264-5473 extension 232.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

ROLAND BARRAL
Area Counsel
Financial Services: Manhattan

By: _____
THEODORE R. LEIGHTON
Associate Area Counsel